



March 2, 1999

Mr. Kevin McCalla
Director
Texas Natural Resources Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-0612

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122366.

The Texas Natural Resource Conservation Commission (the commission) received a request for the salaries of all employees in the Operating Permits Division and the New Source Review Permits Division. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The commission must meet both prongs of this test for

information to be excepted under 552.103(a).

You explain that the commission is currently involved in litigation. You have provided a copy of the original petition in that case. *Rush v. Texas Natural Resource Conservation Commission*, No. A98CA014JN (W.D. Tex. filed Jan. 12, 1998). You have shown that litigation is pending. We now examine whether the requested information is related to the pending litigation. "Ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *Texas Legal Found.*, 958 S.W.2d at 483. You contend that the requested information is related to the subject matter of the lawsuit. You explain that the plaintiff's allegations are based on the denial of promotions and growth opportunities due to race discrimination. You state that

[s]upervisors responsible for evaluating and promoting the former employee, who filed the lawsuit, were also responsible for evaluating and promoting the employees in both said divisions. The supervisors are involved in the pending litigation which involves their management decisions. Additionally, some of the individuals who are employed with the two divisions are part of the same group of employees who are the subject of review in the above referenced lawsuit. Some of the employees who work for the divisions may be called as potential witnesses for the trial in the pending litigation.

We have examined your arguments and the submitted documents. You have shown that the requested information is related to the pending litigation. The submitted information may be withheld under section 552.103. *Texas Legal Found.*, 958 S.W.2d at 483. *But see* Gov't Code § 552.022(2).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 122366

Enclosures: Submitted documents

cc: Ms. Karen Hill
1701 Aggine Lane
Austin, Texas 78757
(w/o enclosures)